Department of Revenue Fiscal Note

Bill Number: 2075 E HB	Title: Estate, transfer tx/edu acct	Agency: 140-Department of Revenue

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

Account	FY 2014	FY 2015	2013-15	2015-17	2017-19
Education Legacy Trust Account-State 01 - Taxes 55 - Inheritance Tax	109,700,000	39,300,000	149,000,000	74,600,000	74,400,000
Education Legacy Trust Account-State 01 - Taxes 75 - Penalties and Intrst	8,700,000	1,700,000	10,400,000	900,000	
Total $	118,400,000	41,000,000	159,400,000	75,500,000	74,400,000

Estimated Expenditures from:

	FY 2014	FY 2015	2013-15	2015-17	2017-19
FTE Staff Years	0.2		0.1		
Account					
GF-STATE-State 001-1	20,600		20,600		
Total $	20,600		20,600		

Estimated Capital Budget Impact:

NONE

This bill was identified as a proposal governed by the requirements of RCW 43.135.031 (Initiative 960). Therefore, this fiscal analysis includes a projection showing the ten-year cost to tax or fee payers of the proposed taxes or fees.

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

☒ If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☐ If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

☐ Requires new rule making, complete Part V.

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Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Note: This fiscal note reflects language in EHB 2075, 2013 Second Special Legislative Session.

This legislation clarifies the meaning of the terms "transfer" and “Washington taxable estate” as used in the Washington estate tax. The Legislature enacted a stand-alone estate tax, which took effect May 17, 2005. The tax applies to the transfer of property at death. A recent Washington Supreme Court decision has effectively exempted qualified terminable interest property (QTIP) from Washington’s estate tax when the taxpayer makes a federal QTIP election and no separate Washington QTIP election. This legislation is intended to restore the estate tax as it existed before that recent court decision.

The definition of “transfer” is amended to clarify that a transfer includes the shifting upon death of the economic benefit in property or any power or legal privilege incidental to the ownership or enjoyment of property.

New language is also added to the definition of "Washington taxable estate" to include the value of any property included in the gross estate under Section 2044 of the Internal Revenue Code, regardless of whether the decedent’s interest in such property was acquired before May 17, 2005.

The bill also provides that if a taxpayer makes a separate Washington QTIP election, the Washington taxable estate of the taxpayer and his or her surviving spouse must be adjusted as follows:
- For the taxpayer, any amount deducted from the federal gross estate by reason of Section 2056(b)(7) of the Internal Revenue Code is added to, and the value of property for which a Washington QTIP election is made is deducted from, the Washington taxable estate.
- Upon the surviving spouse’s death, the amount included in the estate’s federal gross estate pursuant to Section 2044(a) and (b)(1)(A) of the Internal Revenue Code is deducted from, and the value of any property for which a Washington QTIP election was previously made is added to, the Washington taxable estate.

New language adjusts the Washington filing threshold annually using the Seattle-Tacoma-Bremerton metropolitan area consumer price index to determine the adjustment.

A new deduction is created for the value of the decedent's qualified family-owned business interests with the following limitations:
- The value of qualified interests must exceed 50 percent of the Washington taxable estate without regard to the threshold deduction,
- Material participation requirements must be met before and after the death of the decedent,
- The value of the decedent's qualified family-owned business interests is not more than $6 million, and
- The deduction allowed may not exceed $2.5 million.

The top four rates in the Washington estate tax table are each increased:
- From 17 percent to 18 percent,
- From 18 percent to 19 percent,
- From 18.5 percent to 19.5 percent, and
- From 19 percent to 20 percent.

The bill also eliminates liability for a personal representative for estate taxes on QTIP if the decedent dies prior to April 9, 2006, and the property is not located in Washington or under the control of the personal representative.

Sections 2 and 5 of this act apply both prospectively and retroactively to all estates of decedents dying on or after May 17, 2005.

This legislation has an emergency clause and takes effect immediately upon signature, except for Sections 3, 4, and 6 which take effect January 1, 2014.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

This estimate reflects a change in the Department's application of current law due to a recent court case. On January 10, 2013, the Washington Supreme Court denied the Department's petition for reconsideration of its consolidated Estate of Bracken and Estate of Nelson decision.

ASSUMPTIONS

- All estates that have filed a return excluding QTIP assets will file an amended return, so the state will realize all revenues.
- Assumes limiting liability for personal representatives impacts few than 10 estates.
- The entire impact for limiting liability for personal representatives is reflected in Fiscal Year 2014 because all returns for deaths prior to April 9, 2006 have been received by the Department of Revenue.
- All payments are made timely at the 9 month due date.
- The first payments would be due on October 1, 2014, which will result in 9 months of impact in Fiscal Year 2015.
- Federal data of Estate Tax Returns filed for 2007 decedents was used for this estimate.
- Business assets include: 25% of closely held stock, 100% of investment real estate, 100% of non-corporate business assets, and 100% of other limited partnership assets.

DATA SOURCES

- Department of Revenue (Department) Estate Tax data
- Estate Tax Forecast Model (November 2012)
- Federal Estate Tax data

REVENUE ESTIMATES

This legislation will increase revenues to the education legacy trust account by an estimated $118.4 million in Fiscal Year 2014. The estimated revenue increase reflects the retroactive clarifications of the definitions of “transfer” and "Washington taxable estate" to conform to the Department's interpretation, thereby eliminating any refund claims resulting from the recent court decision, other than for the Estate of Bracken. It also reflects other changes made to existing estate tax law.

TOTAL REVENUE IMPACT:

State Government (cash basis, $000):

FY 2014 -	$118,400
FY 2015 -	$ 41,000
FY 2016 -	$ 40,200
FY 2017 -	$ 35,300
FY 2018 -	$ 34,400
FY 2019 -	$ 40,000

Local Government, if applicable (cash basis, $000): None.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing

FIRST YEAR COSTS:
The Department will incur total costs of $20,600 in Fiscal Year 2014. These costs include:
Labor Costs - Time and effort equates to 0.2 FTEs.
- One significant rule-making process to create one new rule and amend three existing rules.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2014	FY 2015	2013-15	2015-17	2017-19
FTE Staff Years	0.2		0.1		
A-Salaries and Wages	12,700		12,700		
B-Employee Benefits	3,800		3,800		
E-Goods and Other Services	2,900		2,900		
J-Capital Outlays	1,200		1,200		
Total $	$20,600		$20,600		

III. B - Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2014	FY 2015	2013-15	2015-17	2017-19
HEARINGS SCHEDULER	32,688	0.0		0.0		
TAX POLICY SP 2	61,628	0.0		0.0		
TAX POLICY SP 3	69,756	0.1		0.1		
WMS BAND 3	88,546	0.0		0.0		
Total FTE's	252,618	0.2		0.1		

Part IV: Capital Budget Impact

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and dexcribe potential financing methods

NONE

None.

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

Should this legislation become law, the Department will use the significant rule making process to create one new rule; and amend the following: WAC 458-57-105, titled: "Nature of estate tax, definitions"; WAC 458-57-115, titled: "Valuation of property, property subject to estate tax, and how to calculate the tax"; and WAC 458-57-125, titled: "Apportionment of tax when there are out-of-state assets". Persons affected by this rule-making would include those required to pay estate tax and estate tax professionals.